

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE



COMMISSION ON RACIAL, ETHNIC, RELIGIOUS
AND MINORITY VIOLENCE

1515 K STREET, SUITE 511
SACRAMENTO 95814
(916) 324-7859
Marty Mercado
Coordinator

Monsignor William J. Barry, Chairman

November 2, 1984

To Legislative Subcommittee Members - David Kassoy
John Mack
Judge Armando Rodriguez

Attached is a summary of the Legislative Committee Meeting held September 10, 1984. With respect to the questions raised, Marty has given me the following information:

Item 1. Can the Commission take a position on legislation independent of the Attorney General?

The answer is yes. If the Commission desires, it may state its own position on legislation, so long as the communication makes clear that the Commission is not speaking for the Attorney General.

However, it is important that coordination be maintained by the Attorney General's Office to avoid any confusion.

Item 3 We are awaiting opinion as to whether the Commission is subject to the Open Meeting Act and whether conference calls by the subcommittees are subject to that act. Therefore we are not to use this method for meeting.

I have made one contact - With Assemblyman Elihu Harris - advising him of the commission's and the subcommittee's existence. He indicated a willingness to work with us on proposed legislation.

Enclosed is a copy of the executive summary of the roll out program which the committee requested.

Very truly yours,

DIANE YU, CHAIRPERSON
Legislative Subcommittee

DY:dah

Enclosure

cc: Monsignor William Barry

RERMV COMMISSION

LEGISLATION COMMITTEE MEETING September 10, 1984 REPORT -

1. Linda Cabatic, DAG, made a brief presentation about the legislative process and possible areas for Commission input. The committee questioned whether the Commission could take a position on legislation independent of the Attorney General.
2. The committee discussed possible areas for future legislative proposals, e.g., training for law enforcement personnel; "seed-money" funding for interpreters; "hate-monger" recorded telephone messages. Committee members also discussed the possibility of establishing a program to provide an Attorney General presence at the scene of a violent crime.
3. The committee discussed a mechanism for conferring on pending legislation. The committee concluded that Deputy Attorney General Manny Medeiros send to the committee members copies of all pending legislation that the commission would be interested in. Whenever possible, the bills would be discussed at the next legislative committee meeting. However, where urgency required an earlier discussion, he would arrange for a conference call on either Thursdays or Fridays at/or after 4:00 p.m. to discuss the bills with the committee members. The committee would then state the position that they wanted to be taken on behalf of the commission at that time. There was some question whether the committee could make any recommendations on legislation without referral of the issue to the full commission.
4. The committee would seek from the full commission direction as to how they should proceed on legislation. Are they authorized to take positions on behalf of the commission in those cases where positions must be determined prior to the next full commission meeting? Does the commission want to be apprised of all legislation before any positions are taken at all? The committee requested the assistance of the commission in devising a mechanism for handling legislation in emergency situations.
5. The committee authorized Diane Yu to draft and send a letter to legislators and other interested groups indicating that the commission does exist and that it does have a legislative subcommittee which is interested in legislation relating to RERMV issues.

The Committee requested a list of all public entities and legal aid-type organizations that have interests similar to those of the Commission.

The Committee would also like a copy of the "roll out" program proposal which the Attorney General implemented while he was Los Angeles County District Attorney.

Diane Yu suggested that the committee meet on February 8, 1985, at 10:30 a.m. in her office in Oakland. It appears that, whether or not there are items to be discussed in December, there will probably be a sufficient number of bills for consideration by the legislative committee in February. At that February committee meeting, the committee could prepare its recommendation for submission to the commission at the March commission meeting.

She asked that if some committee members have any problem with this date or have other suggestions concerning the subcommittee meeting they should get in touch with her.

RATIONALE OF SELECTED RECOMMENDATIONS FOR LEGISLATIVE COMMITTEE *

RALPH ACT RECOMMENDATIONS

RECOMMENDATION #32: A statute patterned after California Civil Code Section 48.7 should be enacted to bar libel and other counter-claims in Ralph Act actions until the Ralph Act claim is resolved.

RATIONALE: Barring counter claims would remove the "chilling effect" of threats of libel and other actions against hate crime victims. Testimony before the Commission indicates the threat of countersuit deters not only Ralph Act actions but reporting of hate crimes. California Civil Code Section 48.7 bars countersuits for defamation in actions involving domestic violence.

RECOMMENDATION #33: Legislation should be enacted to provide for calendar preference in Ralph Act cases in order to provide more timely relief for victims of hate crimes.

RATIONALE: Calendar preference for Ralph Act actions will give hate crime victims the opportunity to have their claims heard in a timely manner and allow judgements to be obtained more quickly. Ralph Act actions would become one of several specified civil actions that are given preference for scheduling on court calendars to avoid excessive delays in bringing cases to trial.

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RATIONALE: Testimony before the Commission indicates that some confusion exists about which state agency responds to complaints involving violence motivated by bigotry. A delineation of the duties of the Fair Employment and Housing Commission to include responsibility for civilly prosecuting acts of violence motivated by bigotry would reduce public confusion and clarify the role of the State in responding to bigoted activity.

RECOMMENDATION #37: The Ralph Act should be amended to treble the actual damages awarded.

RATIONALE: Allowing treble actual damages for Ralph Act violations would enable the court to award three times the amount of actual loss suffered by the victims and include awards for emotional distress, pain and suffering. It makes use of the act more likely and serves as a statement that violence motivated by bigotry is not tolerated in California.

RECOMMENDATION #40: Legislation should be enacted to authorize state funds to provide costs and attorneys' fees for plaintiffs who prevail in Ralph Act actions and in seeking injunctive relief against hate violence when defendants are judgement proof.

RATIONALE: Testimony before the Commission indicates that attorneys are sometimes reluctant to represent hate violence victims in Ralph Act actions because costs and fees are not provided for and many hate crime perpetrators are poor and therefore judgement proof. The creation of a state fund for paying costs and fees would encourage attorneys to represent victims in seeking injunctive relief and Ralph Act actions and encourage victims who cannot afford counsel to seek legal assistance.

HATE CRIME LEGISLATIVE RECOMMENDATIONS

RECOMMENDATION #2: A criminal statute patterned after the Massachusetts Civil Rights Act should be enacted to deter and respond to hate crimes.

Massachusetts Civil Rights Act of 1979, C.L.C. 265 37 : "No person shall by force or threat of force willfully injure, intimidate, or interfere with, oppress, or threaten any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the Commonwealth, or by the Constitution or laws of the United States."

The criminal penalties are fines of up to \$1000 or one year in jail or both; if bodily injury results, a fine of up to \$10,000 or imprisonment of 10 years or both.

RATIONALE: Findings of the Washington Lawyers' Committee on Civil Rights and the experience of the Massachusetts Attorney General indicates that the statute provides an effective response to hate crimes. Massachusetts Attorney General's Office Civil Rights Department Chief Joan Entmacher reports that the statute is used 15-20 times each year. She cites several advantages of its use:

- 1) The statute is a tool allowing intervention by the Attorney General when local authorities are not responding effectively;
- 2) Charging a civil rights violation rather than a misdemeanor crime such as simple assault or vandalism centers the action on the blameworthy act of violence motivated by hate; and
- 3) Massachusetts courts have interpreted the statute not to require the level of

specific intent required by the federal civil rights statutes, making it more effective and less susceptible to technical challenges.

The Massachusetts statute is similar in scope to the federal criminal statute 18 U.S.C. 241. The statute has been held to protect all the rights encompassed by the 14th Amendment due process and equal protection clauses as well as fair housing and civil rights acts.

Although enacting state statutes similar to federal statutes might initially appear redundant, such statutes provide significant advantages:

- 1) State statutes are not limited in their ability to reach private actions by the constitutional constraints on federal actions;
- 2) State statutes can provide for remedies when local authorities fail to act while federal statutes are very rarely used to respond to ineffective local action;
- 3) State enforcement agencies are subject to greater scrutiny by local communities that are concerned with immediate action than federal agencies responsible to decision makers in Washington D.C.

The rights held protected by the Massachusetts statute include freedom of speech, religion and assembly; the right to vote, travel, hold personal property and occupy a dwelling without injury or intimidation or interference; the right to a fair trial, to live in racially mixed households, to be free from physical assault, and to be free from false accusations of criminal conduct.

The statute constantly expands as the legislature, Congress, and the courts define new rights.

RECOMMENDATION #41: Legislation should be enacted to amend California Penal Code Section 1175.5, which identifies motivation based on race, ethnicity, and religion as aggravating factors for consideration in sentencing, to include bias based on sexual orientation, disability, and age.

RATIONALE: Hate crimes against gays and lesbians, disabled persons, and elderly persons would be treated as seriously as hate crimes against racial, ethnic, and religious minorities. The intention of identifying and punishing hate motivation, deterrence, would be extended to all hate crime victims.

RECOMMENDATIONS FOR ACTION BY THE ATTORNEY GENERAL

RECOMMENDATION #36: The Attorney General should recommend the development of Judicial Council forms and procedures patterned after those used in domestic violence cases to facilitate restraining orders and other forms of injunctive relief for victims of hate crimes.

RATIONALE: Special procedures, providing restraining orders and other forms of injunctive relief in 24 to 48 hours will prohibit hate crime perpetrators from harassing victims immediately and avoid escalation of tension and violence. Procedures currently provide for injunctive relief in actions involving domestic violence and landlord/tenant issues in 24 to 48 hours because of the risk of violence, however in these situations it may be more difficult to identify the perpetrators of the harassment.

RECOMMENDATION #39: The Attorney General should maintain The Commission on Racial, Ethnic, Religious, and Minority Violence to monitor the collection and dissemination of information on the incidence of hate crimes.

RATIONALE: Implementation of ongoing procedures for Department of Justice collection of information on hate crimes, based on S.B. 2080, is essential for meeting the goals of preventing and responding to hate crimes in California effectively. Extension of the term of the Commission with responsibility for monitoring the collection and dissemination of hate crime information would provide community representation to ensure the effectiveness of the system.

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Memorandum

To : RERMV Commission
Legislative Committee

Date : February 14, 1985

File No.:

Telephone: ATSS (8) 454-7851
(916) 324-7851

From : Office of the Attorney General—Sacramento MANUEL M. MEDEIROS, Deputy Attorney General

Subject: Procedures for 1985 Legislative Year

As we begin a new two-year legislative session, I thought it would be useful to outline the procedures which should govern the Commission's handling of legislative matters. These procedures are premised on two principal considerations:

- (1) The need to coordinate the Commission's legislative activity with the Attorney General's legislative staff; and
- (2) The need to comply with the Bagley-Keene Open Meeting Act.^{1/}

Recommendations For New Legislation

Recommendations for the introduction of new legislation (to add to, repeal, or to amend existing law) should be included in the Commission's final report to the Attorney General.

Whenever possible, these legislative proposals should be supported by a narrative justification for the legislation which makes reference to specific needs identified by the Commission in the course of its work.

Recommendations On Pending Legislation

During the legislative session, staff will be distributing to members of the legislation committee copies of bills which appear to relate to the Commission's area of inquiry. Recommendations concerning positions to be taken on pending legislation should be presented by the committee to the full Commission for consideration, and should include suggestions for amendments when appropriate. Recommendations from the Commission will be presented to the Attorney General for his consideration.

1. Whether the Commission is actually subject to the Open Meeting Act is an unresolved question. However, the Attorney General has directed that the Commission conduct its affairs in all respects in conformity with the provisions of that Act.

"LOBBYING" ACTIVITY ON PENDING LEGISLATION

Commission members, in their official capacity as such, are free to communicate with Legislators for the purpose of supporting positions taken by the Attorney General on pending legislation. However, so that legislative advocacy activities are coordinated, the Attorney General's legislative office should be informed of any contact made with Legislators concerning legislation, and should receive copies of any correspondence sent to Legislators concerning legislation. Commission members should be aware, however, that travel expenses will not be paid for such activity.

Individual Commission members are, of course, free to communicate to Legislators their personal opposition to positions taken by the Attorney General on pending legislation. They may not, however, do so in their official capacities as RERMV Commission members.

The Commission itself, or individual members in their official capacity, may encourage members of the public to support legislation which the Attorney General is supporting or to oppose legislation which the Attorney General opposes. Here again, however, travel expenses cannot be reimbursed for these activities (e.g., speaking engagements).

As you can see, this framework is premised on the Commission's status as an arm of and advisor to the Office of the Attorney General. Consistency in and coordination of the presentation of legislative positions is necessary to the efficient accomplishment of the Attorney General's legislative program. Restrictions on travel reimbursement are necessary for budget control, and also reflect an appropriate balance between the respective roles of the Commission and the Attorney General's legislative office in matters concerning legislation.

The Attorney General has made quite clear, however, that these limitations should in no way deter the Commission from vigorously pressing to the Attorney General any support or opposition to legislation. The Attorney General established the Commission precisely for the purpose of obtaining advice and recommendations concerning racial, ethnic, religious, and other minority violence, and will give great weight to the positions and recommendations presented to him by the Commission.

If you have any questions concerning specific problems which might arise with this general framework, please do not hesitate to raise them with staff.


MANUEL M. MEDEIROS
Deputy Attorney General

cc: Andrea Ordin, Marty Mercado, Allen Sumner

MMM:ch

RERMV COMMISSION Legislative Subcommittee Recommendations:

1. Legislation should be proposed to provide attorney's fees in Ralph Act actions and allow for payment from the General Funds of those fees when a defendant is judgment-proof;
2. To bar counter claims in Ralph Act actions until the Ralph Act action has been resolved (compare Civil Code Section 48.7);
3. To provide for calendar preference for Ralph Act actions.
4. Amend the Ralph Act & Unruh Act - to clarify that the FEHC has jurisdiction in RERMV cases.
5. To develop a Judicial Council form for accelerated injunctive relief procedures for RERMV victims similar to that which exists in Domestic Violence procedures.
6. Amend the Ralph Act to treble the level of damages awarded in RERMV cases.
7. Enact a criminal statute similar to the Massachusetts criminal statute.
8. Add sentence enhancements to misdemeanors RERMV Cases - include wobbler provision - add mandatory time in jail.
9. Prohibit release of hate crime victims names and addresses to media.
10. Legislation should be proposed that would provide for creation of Human Relations Commissions in every county with an "appropriate" level of funding.
11. Extension of SB 2080.

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**ATTORNEY GENERAL'S COMMISSION ON RACIAL, ETHNIC,
RELIGIOUS, AND MINORITY VIOLENCE**



John Van de Kamp
Attorney General

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Judge Armando O. Rodriguez
Fresno

Dr. Hazel Hawkins-Russell
Riverside

John Saito
Los Angeles

Diane Yu
Oakland

Marty Mercado
Coordinator
(916) 324-7859

February 7, 1985

Diane Yu, Chairperson
Legislative Committee
Court Commissioner
Alameda County Superior Court
1221 Oak Street
Oakland, CA 94612

Dear Diane:

RE: LEGISLATIVE PROPOSAL

The proposal approved at the December meeting, that legislation be introduced this session which would give the Attorney General express authority to train police, district attorney's, and city attorney's in the area of community relations was referred to the Attorney General for his consideration.

It appears that this additional authority is not needed. The Department of Justice already contracts with POST for training so this could be done within existing authority.

Further, the Attorney General indicated that he is reluctant to break away from traditional jurisdictional lines; i.e., why shouldn't POST have this authority? He suggested a letter to him from the Commission giving the background for the request, reasons, etc.

He also suggests that the Commission should write to POST asking them to mandate this training, if that is what they wish to do.

This could be an agenda item for discussion at subcommittee meeting on Sunday, March 3.

Sincerely,

Marty Mercado
MARTY MERCADO
Coordinator

MM:dah

cc: David Kassoy
John Mack
Armando Rodriguez
Monsignor William Barry
Alice Lytle

cc - MARIAN JOHNSON
MAR 14

1515 K Street
Suite 371
Sacramento, CA
95814

Interim Report - Legislation Subcommittee
Diane C. Yu, Chair

The legislation Subcommittee established two main goals at its initial meeting in September 10, 1984: 1) identify and analyze the current state laws in the areas of racial, ethnic, religious, and minority violence; 2) assess the deficiencies of current law and propose specific legislation to improve and strengthen the laws of California in combatting racial, ethnic, religious, and minority violence.

During the first three months, the subcommittee, ~~with invaluable assistance from Commission staff,~~ became familiarized with present laws in the RERMV field. We reviewed materials summarizing legislation prohibiting racial and religious hate violence in California and other jurisdictions. In addition, we were apprised of the status on bills presented during the 1983-84 legislative session.

At the December 13, 1984 Commission meeting, the Legislation subcommittee devoted considerable time to learning the technical aspects of the legislative process. We also discussed what the relationship between the Attorney General and the RERMV Commission was vis-a-vis proposing legislation, e.g., should or could the Commission independently propose legislation, or was working through the Attorney General's own legislative staff preferable or required? May the Commission engage in lobbying? At the subcommittee's requests our staff aides determined that the Commission was authorized to present its own legislative package (copy of Manuel Medeiros's memorandum of February 14, 1985 is attached as Appendix "A".)

The Committee also drafted and disseminated a letter to California legislators and organizations and individual on our expanded mailing list. (Copy of letter attached hereto as Appendix "B".) The aim of the letter was

to invite suggestions from various targeted groups and persons regarding the legislative goals of the RERMV Commission. To date, we have obtained favorable response from at least one legislator Assemblyman Elihu Harris (D-Oakland) regarding his willingness to assist the Commission in sponsoring bills.

At the January, 1985 subcommittee meeting, the subcommittee considered the adequacy of police officer sensitivity and training in detecting and enforcing crimes motivated by the victim's race, ethnic background, religion or minority status. The Subcommittee discussed the desirability of proposing legislation authorizing the Attorney General to develop programs to train police officers, district attorneys and city attorney's in the area of community relations and rights of minority groups. The commissions consensus was to approve the idea in principle, subject to further follow-up on jurisdictional matters and the POST relationship.

The focus of the March 1985 meeting is on scheduling hearings in northern and southern California to discuss legislative priorities. Invitees will include: law enforcement officers, civil rights groups, human rights commissioners, government agencies such as the Fair Employment and Housing Commission, minority bar leaders, and the like. The subcommittee hopes to get concrete ideas and reactions to subcommittee proposals thus far, and solicit additional ideas for legislation. A questionnaire will be sent out to invitees detailing the areas of concern, and enabling those persons or groups unable to attend to respond in writing. The following are some of the present legislative proposals under consideration:

1. Establishment of a separate crime for acts of Racial, Ethnic, Religious, and Minority Violence;
2. Strengthening the remedie under the Ralph Civil Rights Act;

3. Clarifying the jurisdictional authority established under the Ralph Act;

4. Considering other than sentence enhancements for Racial, Ethnic, Religious, and Minority Violence crimes.

The hearings are set for early June, first in Los Angeles and followed by a similar hearing in San Francisco, with an eye to submitting specific proposals to the full commission in September.

Respectfully submitted,

Diane C. Yu